



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

HE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, UNOG

Introduction

1. By incomplete application filed on 13 October 2014, completed on 7 December 2014, the Applicant, a former Text Processing Clerk (G3) at the Chinese Text Processing Unit (“CTPU”), Chinese Translation Section (“CTS”), Division of Conference Management (“DCM”), Office of the United Nations at Geneva (“UNOG”), contests the decision not to renew her fixed-term appointment beyond 30 June 2014.

2. The application was rejected by Judgment *He* UNDT/2016/073 of 28 January 2016. The Applicant appealed the Judgment, and the Appeals Tribunal, by Judgment *He* 2016-UNAT-686 of 28 October 2016, entered in the Register of the Appeals Tribunal on 20 December 2016, vacated the UNDT Judgment and remanded the matter back to the Dispute Tribunal.

3. The case was registered under Case No. UNDT/2014/073/R1, and assigned to the undersigned Judge. After a case management discussion held on 13 April 2017, the matter was set down for a hearing from 7 to 9 June 2017. Several witnesses, including the Applicant and the Chief, CTPU, were heard. Although the application was filed in English, and Counsel for the Applicant was from OSLA, and upon the Applicant’s request, the Tribunal arranged for interpretation services (Chinese/English) throughout the whole hearing.

Facts

4. The Applicant worked as Text Processing Clerk (G-3) at the CTPU from June 2005, on the basis of a short term contract, and, subsequently, on temporary appointments. The temporary appointment was converted into a Fixed Term Contract (FTA) limited to DCM, effective 11 January 2010. While she had numerous extensions of her FTA of only one, two, three or four months from 2010 to 31 December 2012, on 1 January 2013, the Applicant was granted a one year FTA through 31 December 2013. Finally, on 31 December 2013, her FTA was extended for six months from 1 January through 30 June 2014.

5. At a meeting of the Chiefs, DCMs, concerning the recruitment of freelancers, held on 6 November 2012, it was stressed that Language Services (LS) Chiefs should stop recruiting temporary staff who are dictating their own texts, and that preference should be given to temporary staff who are able to type their own texts and corrections, as was the case with contractual translators. It was further stressed that Language Services Chiefs should increase the volume of work sent to the contractual work unit by 10%. They were further encouraged to review the staffing tables of text processing units, within the framework of the 2014-2015 budget preparation.

6. In June 2012, two temporary posts as Chinese Text Processing Clerks were advertised at the G-3 level, and the Applicant applied for them. The vacancy announcement was ultimately cancelled in December 2012, without holding interviews.

7. By email of 7 January 2013, the Assistant Secretary-General, Department for General Assembly and Conference Management (“DGACM”) advised the Director, DCM, UNOG, that DCM should, like DGACM, schedule a ratio of one text processor for three translators and that, as a result, DCM should “be pegging about 66 text processors (rather than the 116 still shown [in its budget])”.

8. The Applicant filed a request for management evaluation against the decision to cancel the G3 vacancy announcements on 6 February 2013. The MEU, by letter dated 28 March 2013, upheld the decision.

9. On 6 March 2013, the Applicant filed a complaint of harassment and abuse of authority by the Chief, CTPU, with the Assistant Secretary-General for Human Resources Management (“ASG, OHRM”).

10. By email of 30 December 2013, at 12:23h, the Chief, LS, DCM, UNOG, noted that LS would begin the new biennium “with further pressure to use contractual translation and text-processing ... and the expectation that the 1:3 ratio [would] begin to be implemented across the remaining three conference servicing duty stations”; he added that while the LS current ratio was closer to 2:3, “it was clear that LS [had to] take action now if it [was] to achieve the desired

ratio through attrition, retraining and redeployment”. He also noted that, as a consequence, some steps had to be taken, *inter alia*, auditing of TPUs during the first quarter of 2014, and reducing the need to transcribe dictation by requiring “all freelance translators ... as planned, to input their own translations using either a keyboard or voice recognition, as from 1 January 2014”. He underlined, too, that “a freeze on the recruitment of entry-level fixed-term staff in the TPUs [would] be effective as from 1 January 2014”, and that “pending the outcome of the above workload evaluation, fixed-term contracts in the TPUs [would] be extended only through 30 June 2014”. In closing, the Chief, LS, DCM, UNOG, encouraged TPUs’ staff “to make full use of the training opportunities available to prepare them for a changing work environment and to apply for other posts in the Secretariat”.

11. By email also of 30 December 2013, at 3:15 p.m., and referring to the earlier email from the Chief, LS, UNOG of the same day, the Chief, CTPU, UNOG, proposed to extend the Applicant’s contract, as well as that of another CTPU staff member (also at the G3 level), only until 30 June 2014 “in light of [the new DGACM budget for 2014-2015” and “pending the outcome of the workload evaluation in the TPUs”. The Chief, LS, DCM, UNOG, approved this request on the same day, at 3:31 p.m. Accordingly, the Applicant’s appointment was extended to 30 June 2014.

12. On 9 February 2014, the Applicant, together with two of her colleagues from the CTPU, filed a joint “complaint against the harassment, retaliation, abuse of authority” (dated 3 February 2014) against the Chief, CTPU, with the Acting Director General, under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority). With respect to the Applicant, the complaint stressed, *inter alia*, that the Chief, CTPU, had always treated her as a temporary staff, and that on 16 October 2013, on the individual daily report, her total none productive time was six hours, and the Chief, CTPU, had marked “no work available”. She stated that the Chief, CTPU, marked twice on her worksheet that there was “no work available”, although work on bi-texts alignment were piling up, and she was able to do the bi-text alignment and that was part of her terms of reference. She stressed that only her and one other staff

member had been marked as “no work available”. She also referred to the cancellation of the temporary G3 posts in December 2012, against which she and that other staff member had complained, following which she was retaliated by the Chief, CTPU. In the complaint, it is also noted that the Chief, CTS, the Applicant’s second reporting officer, had connived with the Chief, CTPU.

13. By resolution A/RES/68/268 (Strengthening and enhancing the effective functioning of the human rights treaty body system) of 9 April 2014, the General Assembly decided, *inter alia*, “to allocate a maximum of three official working languages for the work of the human rights treaty bodies”.

14. On 23 May 2014, the Monitoring, Evaluation, Risk Management, and Statistical Verification Section (“MERS”), Central Planning and Coordination Service, Geneva, issued a draft report, on the *Review of working practices in the text processing units at UNOG (2014)*. The final report was issued in August 2014.

15. By memorandum of 27 May 2014, the Acting Director-General, UNOG, informed the Applicant of the decision not to investigate the allegations the Applicant made in the joint complaint of February 2014.

16. By email of 27 May 2014 at 1:51 p.m. from the Chief, CTPU, to the Deputy Chief, Languages Service, the former stressed that the CTPU was currently composed of 14 staff members, and that the contracts of two of these staff members, including the Applicant, were expiring on 30 June 2014. He stressed that since some staff members in his Unit had complained against him, and while he strongly objected to the allegations made, he was not in a position to make recommendations which may affect them. He noted, however, the following:

However, as the line manager, I have to report to you the current situation of the CTPU, (1) all previous document backlog has been cleared; (2) the backlog of bi-text alignment will be completed by mid of June, (3) the number of words forecast is lower than in 2013; (4) the recent decision of the GA concern HR treaty bodies’ documentation, the workload of the CTPU will be reduced as from January 2015.

17. By email of the same day at 4:18 p.m., the Chief, LS, referring to the email from the Chief, CTPU, of the same day, informed a Senior Human Resources Officer, HRMS, UNOG, that he had looked at the figures, which he noted supported the assertions made by the Chief, CTPU. More specifically, the Chief, LS, stressed the following:

The completion of the work on the CTPU backlog of bitext alignment will certainly cause a significant drop in the workload. MERS has estimated that the CTPU has used 336 net staff days on the bitext alignment legacy in the past year. This alone has accounted for the work of 1.8 staff members according to MERS calculations. In addition, the workload in the CTPU is forecast to decrease by 7% in 2014 as compared with 2013. You may by now be aware of the likely impact of the recent decision of the General Assembly to allocate a maximum of three official working languages for the work of the human rights treaty bodies. This is expected to result in a substantial reduction of up to one quarter of the workload of the CTPU as from January 2015, since it is extremely unlikely that Chinese will be one of the working languages of those bodies.

I would also mention that in all four scenarios in the “Review of working practices in the text-processing units at UNOG” (which was presented to the TPU chiefs last Friday and to translation chiefs this week), the number of TPU staff needed to complete the 2014 forecast is lower than the number of staff used in 2013. This review is the outcome of the audit announced by the Chief of Service in his message of 30 December, highlighting the steps to be taken by LS in light of a new DGACM budget for 2014-2015.

Taking all these things into consideration, and given [the Chief, CTPU’s] understandable reluctance to make a recommendation himself, I would recommend, with the agreement of the Chief of the Languages Service, that the fixed-term contracts of [...] and [the Applicant], which expire on 30 June 2014, should not be renewed.

I take it that you will notify [...] and [the Applicant] of the decision not to renew their contracts by close of business tomorrow at the latest.

18. On 28 May 2014, the Applicant was informed that her FTA was not going to be renewed beyond 30 June 2014. The memorandum stated the following:

This decision is based on the reduction of work within the Chinese Text Processing Unit and the on-going workforce planning done by the Language Services.

19. At the time of the decision, the CTPU was composed of twelve staff members with regular FTA or permanent contracts, from G4 to G7, and two staff members at the G3 level with FTAs limited to DCM, the Applicant and her colleague whose appointment was equally not renewed.

20. The Applicant requested management evaluation of the decision on 6 June 2014, and the Management Evaluation Unit, by letter dated 21 July 2014, replied to her request, upholding the contested decision.

Parties' submissions

21. The Applicant's principal contentions are:

a. At the time of the contested decision, the projected workload at the CTPU was not decreasing and the workload of bi-text alignment was not completed; also, the treaty body reform did not influence the workload of the CTPU and the implementation of the 1:3 ratio was not yet possible in the TPUs in Geneva;

b. The extension of the Applicant's FTA for only six months in December 2013 was specifically targeting her; the terms of the email of 30 December 2013 were clear that pending completion of a workload evaluation all holders of fixed term appointments should be extended only until 30 June 2014 without any distinction being made as to the nature of the FTA; nevertheless, two staff members saw their contracts extended for three years by the Chief, CTPU; this is evidence of unequal treatment of the Applicant and one other colleague, and was the result of malice; the Chief, CTPU, appears to have undertaken a private comparative review regarding the usefulness of staff members at the CTPU;

c. Also, while the Chief, CTPU, admitted in evidence that usually, he would seek contract renewal well in advance, in December 2013, he requested the renewal of the Applicant's contract only the day before the

expiration of her contract and within less than three hours from receipt of the email used to justify the short renewal; inference can be drawn that the Chief, CTPU, had prior knowledge of the email to be released and purposefully delayed the renewal of the Applicant's contract to use the email as a justification for the short renewal;

d. The Applicant made several complaints against the Chief, CTPU, *inter alia*, regarding the cancellation of the G3 posts in 2013, non-allocation of work, the Applicant was thus not an easy staff member for the latter;

e. Had anyone been recruited against the G3 posts which were ultimately cancelled (in December 2012), such recruitment would have been against regular budget and not TAM; the two G3 posts had been offered to the Chief, CTPU, by other TPUs, and it was the Chief, CTPU's decision not to accept them; CTPU did not have sufficient regularly budgeted posts, as is shown by the MERS report; the last three FTA of the Applicant prior to the end of 2012 were against one of the posts previously recruited against; the decision to cancel the posts thus directly resulted in the switch in funding of the Applicant's post from a regularly budgeted post to a TAM post; while she sought management evaluation of the cancellation decision, she did not pursue her case against the cancellation of the G3 posts in December 2012 with the UNDT, since she had received a promise from UNOG that adequate temporary assistance funds would be available for the coming biennium; that was reflected in the response from MEU to the Applicant's first request for management evaluation, and constitutes a *de facto* express promise for contract renewal;

f. Thus, the reliance on scarce TAM to justify the non-renewal of the Applicant's FTA is inconsistent with the information they provided to the MEU a year prior to her separation, and also with the decision to cancel two regular budget posts;

g. The terms of the email of 27 May 2014 from the Chief, CTPU, to the Deputy Chief, LS, and the evidence given by the former at the hearing confirm that while he thought he could not make a recommendation for non-

renewal of the Applicant's FTA, because of the complaints against him, he did in fact make exactly that recommendation; the fact that he tries to distance himself from the responsibility of taking the decision suggests that he lacks confidence in the motivation for that decision;

h. The recommendation by the Chief, CTPU, was made two working days after having received the MERS report, which was not translated into Chinese, and had not been the subject of any review by the management of the Languages Services or any top down recommendation or request for action;

i. While the Respondent heavily relies on the MERS report, the Chief, CTPU, seems to suggest that his own forecast regarding the future workload of the TPU was based more on a personal assessment;

j. While other TPUs had forecasted reductions in workload (Arabic 5%, English 8% and Spanish 12%), none of them separated staff members in 2014;

k. The justification provided for the non-renewal is not supported by the evidence: the indication by the Chief, CTPU, of a prior existence of backlog of documents is contradicted by his evidence to the Tribunal that there was no work to be done; the completion of a backlog is not indicative of a need to reduce staffing but suggests, rather, that previous staffing levels were insufficient;

l. The evidence contradicts any finding that the bi-text alignment would possibly have been completed by mid-June 2014; an enormous amount of documents translated into Chinese for the years 2010-14 have not yet been aligned; the Respondent who should be able to do so provided no persuasive proof to show that legacy bitext alignment was completed; inference can be drawn from his failure to do so; thus, the certainty expressed in this respect by the Chief, CTPU, in his email of 27 May 2014 was not real;

m. In any event, the Chief, CTPU, confirmed that the time spent by the CTPU staff on bitext alignment was insignificant, therefore, any assertion that its completion would cause a significant drop in workload was false, and he knew that;

n. Bitext alignment within CTPU continues, accounting for 1.8 staff members; the reference as to the completion of bitext alignment is misleading;

o. In the forecast contained in the email of 27 May 2014, the Deputy Chief, LS, counted the impact of the completion of legacy bitext twice, thus misrepresenting the information on which the non-renewal was based;

p. The forecast of the impact of the treaty body reform on the workload was equally misrepresented in the email of 27 May 2014; the evidence heard at the hearing from the Executive Officer, DCM, and the former Chief, LS, suggests that the impact of the reform was extremely complicated, and could only be known from six months ahead of the Applicant's separation; the Chief, CTPU, had no real understanding of the reform, however, he relied on it to separate the Applicant; the forecast by the Deputy Chief, LS, of the impact of the reform on the workload was false;

q. Overall, the forecast of the CTPU workload did not come true; it was not merely inaccurate but bears no relation to what actually occurred;

r. The justifications provided by the Respondent with respect to the ratio of one text processing officer to three translators, the increase in contractual translation, and drop in dictation, were not referenced in the contemporaneous communications hence cannot be relied upon;

s. The evidence does not support the Respondent's assertion that the decision was made on a collaborative basis, including well informed individuals; the decision was taken within two and a half hours after the

Chief, CTPU's, recommendation and the Applicant was informed the next day;

t. The assertion by the Executive Officer, DCM, that there were multiple meetings to discuss the decision is contradicted by the documentary record, rather it appears that the decision was taken with haste and without any meaningful questioning of its basis; neither the former Chief, LS, nor the Executive Officer, DCM, appear to have interrogated the forecast relied on, and merely assessed that it chimed with their general understanding; the reasons for the decision were thus not supported by the facts, and the matter was not looked at carefully;

u. The haste applied by the Chief, CTPU, who did not demonstrate any mastery of the facts confirms that the decision was taken in light of the animus he had against the Applicant, it was ratified and enacted without any serious consideration, the MERS report was in a draft form at the time and no conclusions had been drawn from it, and ultimately it does not appear to have been implemented.

22. The Respondent's principal contentions are:

a. The contested decision is not the decision to cancel the G3 vacancies in December 2012, nor the renewal of the Applicant's appointment in December 2014 for six months, nor that not to investigate the Applicant's complaint against the Chief, CTPU;

b. A decision not to renew a FTA can be based on a reduction of work, based on a workload prognosis made at the time of the decision that may indicate a workload decrease for a department in a given budget cycle;

c. The non-renewal decision was taken on the basis of the reduction of work within the CTPU and the ongoing workforce planning done by the Languages Service, the recommendation was made by the then Deputy Chief, LS, and implemented by HRMS/UNOG;

d. The record shows that on the basis of the data available at the time, it was not unreasonable to conclude that there would be a decrease of work in the CTPU;

e. The reduction of work in all the TPUs is well documented; changing work patterns, particularly the use of dictation, the policy to increase the volume of work sent to the contractual work unit, and the adjustment toward the standard of one text processor for every three translators were discussed since at least November 2012, that is, long before the Applicant submitted her first complaint against the Chief, CTPU; the Applicant was aware of these changes and the changes continued to be implemented, as demonstrated by the freeze for entry level fixed term staff in the TPU effective 1 January 2014;

f. All the TPUs were affected by the reduction of workload and related workforce planning: posts were reprogrammed and staff were transferred wherever feasible; another G3 staff member, in the RTPU, was also not renewed at the end of 2014; two Text Processing Clerks were transferred in June 2014, to HRMS, and vacant posts were kept vacant;

g. The reduction of work and workforce planning is further corroborated by the implementation of the ratio three translators for one Text processing clerk; it was reached for the French and Spanish translation in 2016. Overall, for UNOG, the ratio in 2016 is 2.8 translators per Text Processing staff; for the Chinese Language, the ratio is currently at 2.1, which signifies that more efforts should be done; the reallocation and workforce planning is still ongoing, as two vacant posts in the CTPU will be abolished in the 2018-19 budget;

h. The Applicant only speaks Chinese and mainly typed texts recorded by translators on dictating machines; already in November 2012 Chiefs of the Languages services were asked to stop “recruiting temporary staff members that [were] dictating their own texts”;

i. Also, in its report of May 2014, MERS stated with respect to dictation that with the introduction of eLuna and the increased use of voice recognition software, the argument that dictating is faster and cheaper will no longer be valid and that “the days of typing pool, to supply the manual labour needed in the past to convert the translator’s intellectual work into a physical product, are surely numbered”;

j. The use of dictation is now virtually inexistent and when texts are keyboarded directly by translators, the labour intensive part of typing texts recorded on a dictating machine disappears; as such, the whole work pattern of the typing pool is modified, like the formatting or the proofreading; in fact, the type of tasks performed by the Applicant have become obsolete;

k. After her separation from service, no one took over the work and functions of the Applicant; while the CTPU had 14 staff members in June 2014, it only had 11 staff members in December 2014, and today, it only has 11 established posts, with two vacant posts to be abolished in 2018-2019 budget; only six posts are currently encumbered by staff members; the Deputy Chief, CTPU, testified that the CTPU currently can cope with the workload and the former Chief, LS, gave evidence that, despite staff reduction, the compliance rate in the TPUs is 100%;

l. Evidence from the Executive Officer, DCM, and the former Chief, LS, confirmed that in light of the Applicant’s professional profile and language skills, it was not possible to transfer her: her FTA was limited to work in DCM, and she never passed the ASAT test in one of the working languages;

m. The prognosis by the Deputy Chief, LS, was reasonable at the time of the decision and in line with the trends as broadly described by the former Chief, LS, and the Executive Officer, DCM; even if the projected decrease was ultimately less significant than the Deputy Chief, LS, had expected, his prognosis should not be under scrutiny, since no allegation of retaliation was made against him by the Applicant;

n. Both the then Chief, LS, who had broad experience, and the Executive Officer, DCM, confirmed in their evidence to the Tribunal that there was an expected decrease, and changing working patterns; the figures pointing to a reduction of the work in the CTPU were in line with these trends and DCM management knowledge that the workload of the TPUs decreased, and would further decrease; the statistical data contained in the MERS report also confirmed the trend of a workload reduction within CTPU;

o. With respect to the email of 27 May 2014 from the Chief, CTPU, the Respondent notes the following:

i. The number of words forecast by MERS for 2014 was lower than the number of words for 2013;

ii. The Human Rights Treaty body did result in a drop of the workload at the CTPU, from roughly 2.4 million words in 2014 to 1.9 in 2015 and further to 1.2 in 2016; while the impact may not have been precisely forecasted, it was known that it would particularly impact the Chinese, Russian and Arabic language Section;

iii. The forecast relating to the completion of the “bitext alignment legacy” was the most challenged one; all TPUs were requested to verify the bitext alignment for documents from 2010 to mid-2014, to provide a large translation memory for the eLuna software, to be rolled out in July 2014; the Chief, CTPU, advised the Deputy Chief, LS, by email in February 2014 about the advancement of this task, which was then almost completed; MERS also considered that the legacy alignment would be completed in mid-2014;

iv. The evidence shows that this specific one-off task of the bitext alignment was completed in June 2014; it was never claimed that no more bitexts would be created, since eLuna depends on a continuously updated supply of bitexts, the Chief, CTPU email with respect to the likely reduction of work was thus correct;

p. It would be far-fetched to suggest that not only the Chief, CTPU, lied, since February 2014, to his supervisors, colleagues and MERS, in order to retaliate against the Applicant, but also that the Deputy Chief, LS, who reviewed the figures, lied to management or endorsed an unreasonable prognosis; it is also far-fetched to suggest that the Chief, LS, and the Executive Office would have endorsed a recommendation not to renew a contract if no valid justification was given;

q. The evidence of the Applicant's spouse is unreliable; he did not work as a translator nor as a text processing staff, and was not privy to decisions taken by management or the Chiefs, TPUs, and the tasks they have been asked to perform;

r. The allegations with respect to the Chief, CTS, were unfounded; he went on early retirement and the OIOS investigation concerning the Chief, CTS, was unrelated to the Applicant; the Applicant's Counsel reviewed the relevant documentation; equally, the former Deputy Chief, LS, was not dismissed, but retired, and no instances of unprofessional conduct were ever recorded against him; these allegations by the Applicant are frivolous;

s. The staffing tables demonstrate that at the time of the contested decision, CTPU had 12 established posts, and the Applicant was not sitting on one of them; while her FTA was at some point financed through the regular budget, it was on posts established under the English TPU; as of at least March 2015 there are no more text processing clerks, the only G3 staff remaining in March 2015 in the Text Processing Section is an Administrative Assistant; the "TAM" posts are vacant as of at least September 2015;

t. The argument that money could have been found to keep the Applicant despite the decreasing workload must fail; spending public money no matter what would send a strange message to managers and donor countries; if work decreases and the needs of Departments no longer justify the use of a post, it can be in the Organization's interest to save money instead of using available resources;

u. Although the legality of the decision not to investigate the complaint against the Chief, CTPU, is not under review, evidence has been provided to demonstrate that the Applicant's complaint was thoroughly reviewed before such decision was taken; the allegations were mainly work related, or issues already addressed; the deterioration of working relations between the Chief, CTPU, the Applicant and two other staff members was well documented and also the result of financial constraints, and changing work patterns, and the fact that there was sometimes no work available; as such, the Chief, HRMS, noted in his recommendations that "some remarks made by the complainants also tend to indicate that there is an issue with the volume of the work in the CTPU, that would not be sufficient for the number of staff employed"

v. The Applicant was not treated differently and was not retaliated against; the statement by the Appeals Tribunal in para. 40 of its judgment that the Applicant was in the period immediately preceding her separation "subject to the practice of monthly renewal" is incorrect; the Applicant's contract was not renewed on a monthly basis in the period preceding her separation; from the conversion of her temporary appointment to her "FTA limited to DCM" to 31 December 2012, the Applicant was indeed granted contracts ranging from one to four months; however, thereafter, the Applicant's contract was renewed for one year, from 31 December 2012 to 31 December 2013, and then for six months, from 1 January 2014 until her separation on 30 June 2014; this excludes the possibility that the Applicant's contract was renewed on a monthly basis in retaliation for her submitting a complaint: the first complaint was filed in March 2013 and the second one in February 2014;

w. Further, the Applicant was not treated differently from other G-3 staff members who had retroactively received a limited FTA;

x. In light of her professional profile and language skills, it was not possible to transfer the Applicant elsewhere;

y. The Applicant did not avail herself of the mechanisms offered by ST/SGB/2005/21;

z. The decision was not *ultra vires*; a recommendation to extend or *not* to extend an appointment comes from the line manager, and is approved by his or her supervisor, the Director of the Service, reviewed by the Executive Office, and implemented by HRMS; to recommend contract extension although the services of a given staff member are no longer required, would be a serious breach of a manager's duties and lead to a fictitious employment;

aa. In the present case, the Chief, CTPU, was reluctant to make a recommendation, consequently, it was made by the Deputy Chief, LS; "with the agreement of the Chief of the Languages Service"; the Deputy Chief, LS, who directly supervised the Editing Section, the Text Processing Units and the Reference Units, had the authority to make this recommendation, which was thus not taken *ultra vires* (cf. *Filippova* UNDT/2016/006);

bb. Since the reason for the non-renewal of the Applicant's FTA was supported by the facts, and was not improperly motivated, the application should be dismissed.

Consideration

23. In her application, the Applicant contests the non-renewal of her FTA beyond 30 June 2014. This case has been remanded back to the Dispute Tribunal by the Appeals Tribunal by Judgment *He 2016-UNAT-686*.

24. In its Judgment, the Appeals Tribunal noted that "there has not been an adequate fact-finding exercise by the UNDT which enables us to pronounce confidently on the facts, the inferences to be drawn from them and ultimately to decide if the Appellant has established on a balance of probabilities that the non-renewal of her contract was unreasonable on grounds of the true reason being retaliation". It further noted that "[t]he proof of contested material facts, points of difference, requires evidence subjected to examination, cross-examination and re-examination, which then can be assessed or evaluated on the basis of the

credibility and reliability of the witnesses, in the light of their bias, demeanour and relationship to the parties; the probabilities attending their versions as tested by contemporaneous evidence of another kind; and ultimately the inherent probabilities”. The Tribunal will thus assess the factual issues referred to in para. 42 of Judgment *He* of the Appeals Tribunal in light of the above observations.

25. Before entering into an examination of the present case according to the parameter set down by the Appeals Tribunal in *He*, the Tribunal finds it important to recall the applicable legal framework and relevant jurisprudence with respect to the non-renewal of FTAs.

26. As provided for in staff rule 4.13:

Fixed-term appointment

(a) A fixed-term appointment may be granted for a period of one year or more, up to five years at a time, to persons recruited for service of a prescribed duration, including persons temporarily seconded by national Governments or institutions for service with the United Nations, having an expiration date specified in the letter of appointment.

(b) A fixed-term appointment may be renewed for any period up to five years at a time.

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b).¹

27. Similarly, according to staff regulation 4.5(c) “[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service”.

28. This is confirmed by the established jurisprudence of the Appeals Tribunal, which ruled that a fixed-term appointment has no expectancy of renewal or of conversion to any other type of appointment (*Syed* 2010-UNAT-061; *Appellee* 2013-UNAT-341). The Appeals Tribunal further held in *Ahmed* 2011-UNAT-153 that:

¹ Staff Rule 4.14 applies to continuing appointments and is not relevant to this matter.

47. [U]nless the Administration has made an “express promise ... that gives a staff member an expectancy that his or her appointment will be extended”, or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member’s fixed-term appointment is not unlawful.

29. Thus, a non-renewal decision can be challenged on the grounds that it was arbitrary, procedurally deficient, or the result of prejudice or some other improper motivation (*Morsy* 2013-UNAT-298; *Asaad* 2010-UNAT-021; *Said* 2015-UNAT-500; *Assale* 2015-UNAT-534). The burden of proving improper motivation lies with the staff member contesting the decision (*Asaad* 2010-UNAT-021; *Jennings* 2011-UNAT-184; *Nwuke* 2015-UNAT-506; *Hepworth* 2015-UNAT-503), and a conclusion that the Administration had hidden motives not to renew a fixed-term appointment has to be based on evidence and not solely on speculation (cf. *Pirnea* 2013-UNAT-311).

30. According to the jurisprudence of the Appeals Tribunal, expectancy for renewal requires an express promise that cannot be based on mere verbal assertion, but has to be in writing (cf. *Igbinedion* 2014-UNAT-411). In *Munir* 2015-UNAT-522, the Appeals Tribunal held that a legitimate expectation of renewal has to be “based on ... a firm commitment to renewal revealed by the circumstances of the case”.

31. The decision not to renew a FTA is often closely linked to the Organization’s broader discretion on how to organize its services. In that respect, the Tribunal notes that in times of scarce resources, managers bear particular responsibilities for making sound management decisions, which implies making an assessment of services needed at a given time in a given department, and to avoid to unnecessary expenditure of public money with which they are effectively entrusted.

32. The Tribunal appreciates the importance of the factual issues raised by the Appeals Tribunal in *He*. However, it notes that any *post facto* assessment of these matters is only relevant to the extent that it is able to demonstrate that on the basis of the information available at the time, no reasonable decision-maker would have

made the non-renewal decision. The Tribunal has to assess whether from the point of view of a fair-minded objective observer, with the information available at the time of making the decision, the forecast made by the Chief, CTPU, and the Deputy Chief, LS, in their emails of 27 May 2017, was so far away from the reality that it made the non-renewal decision unreasonable. That is the test the exercise of discretion by the Administration has to pass, and it would be entirely inappropriate for the Tribunal to enter into a detailed examination of the actual figures provided in the emails of 27 May 2014, and to substitute its own assessment for that of the Administration, on the basis of the information available today.

33. With this in mind, it is noted that the basis for non-renewal of the Applicant's FTA contained in the memorandum of 28 May 2014 from the Senior Human Resources Officer, HRMS, UNOG, referred to "the reduction of work within the Chinese Text Processing Unit and the on-going workforce planning done by the Language Service". It was based on assessments made and set out in the emails of 27 May 2014 from the Chief, CTPU, and the Deputy Chief, LS, and which were endorsed by the former Chief, LS, and the Executive Officer, DCM.

34. The Chief, CTPU, in his email of 27 May 2014 to the Deputy Chief, LS, had stressed that: "(1) all previous document backlog has been cleared; (2) the backlog of bitext alignment will be completed by mid of June; (3) the number of words forecast is lower than in 2013; (4) the recent decision of the GA concern HR treaty bodies' documentation, the workload of the CTPU will be reduced as from January 2015".

35. The Deputy Chief, LS, in his email of the same day to the Senior Human Resources Manager, HRMS, UNOG, on his part, noted that:

The completion of the work on the CTPU backlog of bitext alignment will certainly cause a significant drop in the workload. MERS has estimated that the CTPU has used 336 net staff days on the bitext alignment legacy in the past year. This alone has accounted for the work of 1.8 staff members according to MERS calculations. In addition, the workload in the CTPU is forecast to decrease by 7% in 2014 as compared with 2013. You may be now be aware of the likely impact of the recent decision of the General

Assembly to allocate a maximum of three official working languages for the work of the human rights treaty bodies. This is expected to result in a substantial reduction of up to one quarter of the workload of the CTPU as from January 2015, since it is extremely unlikely that Chinese will be one of the working languages of those bodies.

I would also mention that in all four scenarios considered in the "Review of working practices in the text-processing units at UNOG" (which was presented to the TPU chiefs last Friday and to translation chiefs this week), the number of TPU staff needed to complete the 2014 forecast is lower than the number of staff used in 2013. This review is the outcome of the audit announced by the Chief of Service in his message of 30 December, highlighting the steps to be taken by LS in light of a new DGACM budget for 2014-2015.

Witness evidence

36. In order to get a proper sense of the working situation, and workload, at the CTPU at the time of the contested decision, and the impact of changing working patterns on the workload in 2014, the Tribunal heard extensive evidence from several witnesses, under oath, namely the Applicant, her husband, the Deputy Chief, CTPU, the Chief, CTPU, the former Executive Officer, DCM, and the former Chief, Languages Service, DCM.

37. The Tribunal found that the Applicant in her evidence was not entirely forthcoming and did not, for example, provide much insight into her relationship with the Chief, CTPU, nor the treatment she allegedly suffered from him. Overall, her testimony was of not much assistance to the Tribunal for its assessment of the reasonableness of the projected forecast, on the one hand, and the allegation of *ulterior motives* on behalf of the Chief, CTPU, against the Applicant, on the other hand.

38. The Tribunal also noted that while the Applicant's husband made best efforts to support his wife's case, and to provide relevant information to the Tribunal, he admitted that the data he had generated to establish the backlog in bitext alignment was not entirely reliable. In cross examination he also noted that he never worked in the CTPU, nor was he invited to attend the meetings of and with the Chiefs, TPUs, or any discussions they had on bitext alignment or any

other matter relevant to this matter. The Tribunal understood that this witness could not be familiar, in detail, with the actual and projected workload at the CTPU, and the reasonableness, or otherwise, of related management decisions.

39. The evidence of the Deputy Chief, CTPU, did not contest that the CTPU staffing had been considerably reduced since 2014, and that the work was accomplished by six staff members at the moment, compared with fourteen staff members in 2014. However, she expressed her view that as a consequence of the staff reduction, it was difficult to guarantee the quality of the work accomplished at the CTPU. It would be inappropriate for the Tribunal to comment upon the quality of the work accomplished at the CTPU, and draw any conclusion as to the appropriate level of staffing in light thereof, since this is a matter falling entirely into the discretion of management and would imply that the Tribunal substitute itself for the Administration, which it is not allowed to do. If the managers are content with the quality of the work produced, this is a matter for them and it is not a matter relevant to the matters in dispute in this matter.

40. Regarding the evidence heard from the Chief, CTPU, the Tribunal found that it was apparent that he was trying his best to manage a service which worked under a number of constraints, and that the decisions he took in the day-to-day management of the CTPU, including in assigning work, were motivated by his conviction to act in the best interests of the Organization. It became obvious that he wanted to do a “good job” by making the CTPU an efficient service, which adjusted well to the challenges ahead, and changing working patterns. The Tribunal noted, with concern, the statement by the Chief, CTPU, that already in 2013, there had not been enough work to do and that some staff members were not working, for lack of workload. He stressed that this was a matter that had been discussed with other Chiefs of TPUs, who had similar problems, and that it appeared absurd to him that the same work was repeated several times on the same documents, just to keep staff members busy. He stressed that prior to his email of May 2014, he had already highlighted to management that he did not have enough work for all the staff members in his unit. In his evidence, the Chief, CTPU, repeatedly, quite credibly and with some expressed despair, stated that there was not enough work and that this made his management of the unit

difficult. He described the day-to-day work in the unit, in which he was not able to give enough work to everyone. He also noted that in order to do effective bitext alignment, staff needed a certain level of English. That was also confirmed by the then Chief, LS. He further described that he made a genuine assessment of the workforce needed in 2014, particularly on the basis of the progress made with respect to the bitext alignment, and the reform of the Human Rights treaty bodies, which would lead to a further decrease of work. He expressed his conviction that as a manager, he was responsible to the Secretary-General, and had to ensure that the work is being accomplished with high efficiency, and not to waste the Organization's resources. He stated in cross-examination that the reason behind the non-renewal of the Applicant's FTA was the fact that there was not enough work available, and that it was unrelated to the complaints she had made against him. The Tribunal found the Chief, CTPU, was a credible and reliable witness.

41. Quite importantly, his evidence was confirmed by that of the former Executive Officer, DCM, and the former Chief, Languages Service, DCM. The Tribunal noted that no allegations of ulterior motives or retaliation were made by the Applicant against these managers. Both confirmed that it was obvious at the time of the contested decision that the work of the TPUs was changing, and that staff members of all TPUs had been encouraged to undertake trainings to change career paths, and to look for other opportunities, such as in IT or human resources. Some staff members of TPUs were indeed transferred to other services in 2014, which was unfortunately not a possibility for the Applicant, in light of the limitations of her contract to DCM, her limited languages skills and the fact that she had not passed the ASAT in English or French, that is, either of the working languages.

42. The former Executive Officer, DCM, confirmed that at the time of the contested decision, it was anticipated that the reform of the Human Rights Treaty bodies would result in a reduction of the amount of documents to be routinely translated into Chinese. One feature of the reform was that from then on, the translation of many documents to Chinese would no longer be automatic, but would only be done upon the express request of a government. Further, the reform entailed a word limitation. She further stressed that there was an increase in

contractual translation which implies the production of a print ready document, including text processing. She noted that at the time of the contested decision it was clear that in the near future there would be a further decrease in text processing through reduced dictation, the use of Dragon, and an overall decrease of demands for Chinese documents. She also noted that DCM was in a more difficult financial situation in 2014, as compared with 2007, and that there was an important reduction of almost by 50% of TAM resources. She stressed that given that context, when the email of 27 May 2014 recommending not to renew the Applicant's appointment came to her as the Executive Officer, it made sense to her. While she admitted that she did not "crunch the numbers" or "repeat their statistics", the recommendation was consistent with the changed working patterns and the messages that had been sent by management to the Chiefs, TPUs, and also the discussions held around the MERS study and report.

43. The evidence of the then Chief, Languages Service, DCM, confirmed that trend, and explained how with the expected introduction of eLuna, the whole landscape and working processes of the Languages Service were supposed to change further, which would impact on needs for typing staff of the TPUs. Overall, typists were getting obsolete and a luxury that was not necessary or justified any more. He also stressed that the Deputy Chief, LS, was closely involved in the management of the TPUs and was a very meticulous manager with a lot of experience in this field. The then Chief, LS, also confirmed in his evidence that in light of the upcoming technological changes, the introduction of the new software, and also the treaty body reform, he found it was reasonable to assume that the workload of the CTPU would be reduced. He expressed his view that the email from the Deputy Chief, LS, confirmed what he already knew, in light of his 30 years' experience in that area, and that the decision not to renew the Applicant's FTA was an informed and justified one. He also noted that Languages Service was under pressure to comply with the ratio of one text processing clerk for three translators, and that when contracts in the TPUs were up for renewal, management gave consideration to reassigning staff, if they had the necessary skills. He stressed that unfortunately, in light of the Applicant's limited languages and professional profile, and her contract being limited to DCM, no

solution was found for her. The then Chief, LS, also stated that today, with only six staff members, the compliance rate by the CTPU was acceptable, and that the situation in 2017 confirms that the assessment made vis-à-vis the non-renewal of the Applicant's appointment at the time was correct.

Impact of the Human Rights Treaty bodies and bi-text alignment

44. In light of the evidence heard, the Tribunal is satisfied that it was not unreasonable to conclude, at the time of the contested decision, that the reform of the human rights treaty bodies would reduce the workload of the CTPU: even if it may not have been possible to exactly quantify the impact of the reform on the workload of the CTPU, it was reasonable to conclude that the fact that as a result of the reform, many documents would no longer be systematically translated into Chinese, at least in total, and that a word limitation would apply, would lead to a considerable reduction of workload at the CTPU.

45. With respect to the bitext alignment, the Tribunal noted that the Applicant submitted long lists from the eRef tool to calculate the total number of documents in document storage for Geneva from 2000 to May 2014, which, she claimed, represents the backlog requiring bi-text alignment. However, at the hearing, it became apparent that the eRef and the data generated from it was entirely unreliable and not able to provide statistics on what documents had been aligned or when. Further, the Tribunal understood that the legacy bitext were old documents, which needed to provide a large enough "translation memory" to ensure that eLuna CAT tool, which is based on a mathematical model counting numbers of occurrences of certain translations, works properly. Finally, the Administration clarified that it never claimed that there would be no further bitext alignment, and that what was meant by elimination of backlog was to create that large enough translation memory, amongst 2010 to 2014 documents, to make the eLuna work.

46. The determination of what constitutes a "large enough translation memory", and whether to some extent and some documents, automatic alignment may be sufficient implies an exercise of discretion, and the Tribunal will not easily get involved with that. It appears that the CTPU determined that sufficient documents

had been aligned, being a total of 9.181 bitext documents, but the bitexts continue to be updated in eLuna. The (draft) MERS report had also confirmed, in May 2014, that the bitext alignment would be finished by mid-2014. The individual view of the Applicant's husband that "this was not possible" is thus not relevant for the assessment whether the conclusion by the Administration in this respect was reasonable. On the basis of the documentary evidence and the evidence heard at the hearing, the Tribunal is satisfied that the Administration's reliance on the completion of the backlog of bitext alignment of documents from 2010 and 2014 by mid-2014, in taking the non-renewal decision, was reasonable.

The placement of the Applicant against TAM

47. Further, the Tribunal notes that the Applicant's contract had been financed through established posts between September 2011 and December 2013, and through TAM only as of 1 January through 30 June 2014. The Chief, CTPU, stressed in his evidence that the decision as to what post is used to finance a certain contract is taken by the Chief, LS and the Chief, CTS, and not by him. The Applicant argued that she was placed on TAM as a result of the decision to cancel the G3 vacancies in December 2012. First of all, the Tribunal notes that the contest in respect of the cancellation decision is not properly before it, and can be reviewed only incidentally. The Tribunal found the explanation provided by the Chief, CTPU, behind the rationale for his proposal to cancel the G3 vacancies in December 2012, namely, that in light of the changing working processes and related reduction in workload, the CTPU did not need so many regular posts, equally reasonable and consistent with the additional evidence heard at the hearing. It was also coherent with the email sent by the then Chief, LS, on 6 November 2012, encouraging the Chiefs, CTPU, to review their staffing tables, and that "post cancellations ... would be considered favourably by the Executive Office".

48. The Chief, CTPU, plausibly explained that the use of TAM instead of regular posts allows the Organization to adjust more flexibly to the actual needs and workload at the CTPU. The Tribunal finds that there is no evidence, whatsoever, that would allow an inference that the post cancellation in December

2012 was part of a plan to get rid of the Applicant, for ulterior motives, in June 2014. Rather, the evidence from the Chief, CTPU, was that the *rationale* behind his proposal to cancel the two G3 posts was to efficiently use the Organization's resources. In the Tribunal's view, this, again, appears reasonable and sound management and a proper exercise of discretion by the Administration. There is no evidence to the contrary.

Chronology of contract renewals

49. The chronology shows that the Applicant received a FTA of one year from 1 January 2013 to 31 December 2013, and one of six months on 1 January 2014. It was thus not renewed on a monthly basis in retaliation for the Applicant having submitting a complaints in March 2013 and February 2014, as seems to be suggested by her.

No one was recruited to replace the Applicant

50. The former Chief, LS, gave evidence that no one was recruited to replace the Applicant. The evidence shows that while in June 2014, the CTPU had fourteen staff members, in December 2014, it only had eleven; today, it still has eleven established posts, but only six of them are currently encumbered by staff. Nevertheless, on the evidence before the Tribunal the work at the CTPU is completely accomplished. In light of the further reduction in workload, it seems coherent that for the 2018-19 budget, it is proposed that two of the currently vacant regular posts be abolished.

51. The Tribunal finds that although this information was not available at the time of the contested decision, it undoubtedly shows that the prognosis made at the time of the contested decision was in no way unreasonable. It was made in order to adjust to a changing working environment in which the work of a Text processing clerk was becoming more and more obsolete. The decision was reasonable, and a proper exercise of discretion, at a time where the United Nations often face criticism of wasting of resources, and managers are asked to "achieve more with less".

Resignation of the Chief, CTS

52. It is no longer contested that the then the Chief, CTS, was not dismissed, but resigned, and that the investigation he had been subjected to, previously, was unrelated to the Applicant. It is thus of no relevance to this case.

Inference drawn from the Applicant's harassment complaint of February 2014

53. The decision not to investigate the Applicant's complaint was not formally contested by her. The Tribunal can only review the matter to the extent it that an inference may be properly drawn that the non-renewal decision was based on ulterior motives. Having reviewed the terms of the joined complaint as far as it related to the Chief, CTPU, behaviour vis-à-vis the Applicant, and in light of the evidence during the hearing, the Tribunal is satisfied that the issues the Applicant complained of mainly related to work issues. The Tribunal also notes that the Director-General, in his letter of 27 May 2014, expressed some concerns with respect of the management skills of the Chief, CTPU, however, the only matter in respect of which the Chief, CTPU, had been rebuked, and strongly reminded of his duties as an international civil servant, related to another staff member (Ms. D.) and not to the Applicant. Also, and quite importantly, the Director-General, UNOG, stressed that the deterioration of the working environment could not be attributed to the Chief, CTPU, alone. The Tribunal is satisfied that the work-related tensions, which are not denied, were mainly due to changing working processes and the Chief, CTPU, trying to address the fact that there was not enough work to do for all the staff. These tensions, while regrettable, do not support any conclusion of an ulterior motive with respect to the recommendation and decision not to renew the Applicant's appointment beyond 30 June 2014.

Ultrior motives

54. The Applicant argues that the decision was the result of bias and animus, based on an ongoing conflict between the Applicant and the Chief, CTPU. She notes that she was subject to unequal treatment and asks the Tribunal to find that the decision was discriminatory.

55. First, the Tribunal notes that in light of its conclusion that the decision was justified based on a reasonable conclusion in May 2014 that the workload in the CTPU would be considerably reduced, no negative inference of bias is to be drawn from the reason provided for the non-renewal.

56. Second, the Tribunal notes that the Applicant and her colleague, whose contract was equally not extended, were the only G3 Text Processing staff members in the CTPU, with a FTA limited to DCM. Any alleged differential treatment has to be examined in light of the Applicant's status. The decision to extend the Applicant's contract only for six months in December 2013 is not directly subject of the present application. The Tribunal will therefore examine it only to the extent it is relevant for the assessment whether the non-renewal decision was based on ulterior motives. The email of 30 December 2013 did not differentiate between the nature of the contract (limited or not to DCM) or the level of staff (G3 or other). However, the Chief, CTPU, described the difference in tasks and work autonomy between a G3 and a G4 staff member at the CTPU, and that G3 staff members could only work on parts of documents, and generally needed to work together with G4 staff member. When the Chief, CTPU, following receipt of the email of 30 December 2013, decided to limit the contract extension only of the Applicant and the other G3 colleague's contract to six months, their status, professional experience and language profile, were thus relevant considerations to be taken into account. The Chief, CTPU, explained that against usual practice, he made that decision only a day before the contract was up for renewal, but that he had previously discussed the situation with the Applicant and that he did not know how the budget situation was until 30 December 2013. The Tribunal finds that no negative inference with respect to the non-renewal decision can be drawn from this and the fact that the contract was extended only for six months.

57. The other issues complained of by the Applicant vis-à-vis the Chief, CTPU, relate mainly to the assignment or work, or performance evaluation. In that respect, the Chief, CTPU, credibly explained that a situation already existed where prior to 2014, he did not have enough work for all staff. The fact that at one or two occasions, he marked that there was no work available for the Applicant

seems to be a mere reflection of this. While it is not contested that there were tensions between the Applicant and the Chief, CTPU, the Tribunal is satisfied that those were mainly resulting from the changing working processes, and that sometimes, there was no work available. The tension was not demonstrated to be such as to lead to an inference of bias or unequal treatment of the Applicant. The fact that the Applicant had many FTAs of a short duration, although it may have been a reflection of poor management, does not support any conclusion of bias, either, as these short FTAs were given to her prior to the Applicant's complaints against the Chief, CTPU. Finally, the fact that the Chief, CTPU, had evaluated the Applicant on the form used for temporary appointment holders, while regrettable and again poor management, was corrected and does not lead to a conclusion of bias against the Applicant.

58. Quite importantly, the Chief, CTPU, in light of the complaints made against him by the Applicant, when drafting the email of 27 May 2014, was cautious to ask for a review by the Deputy Chief, LS, who made the recommendation which was endorsed by the Chief, LS, and the Executive Office. The Applicant did not make any allegations of bias against these higher managers.

59. The Deputy Chief, LS, reviewed the email of the Chief, CTPU, and made his own assessment, which, in light of the above findings of the Tribunal, was reasonable. The Applicant's argument that the Chief, Deputy Chief, LS, e.g. counted the decrease in workload of 7% twice, or that his assessment that the workload would be reduced by one quarter as a result of the treaty body reform was not possible, since the work on the treaty bodies in 2013 only reflected 15%, is immaterial. In light of the circumstances, it was clear that the reduction of work at CTPU as of mid-2014 was such that it was not unreasonable or inappropriate to reduce its level of staffing at that time. Certainly, no allegations of bias were made against the Deputy Chief, LS, the Chief, LS, or the Executive Office. All of these managers reviewed, and endorsed, the non-renewal of the Applicant's FTA.

60. The Applicant notes that senior management did not apply sufficient care when it endorsed the recommendation with haste. The Tribunal is satisfied that the evidence provided at the hearing showed the contrary: while senior managers

may not have redone the statistics, they confirmed that in light of the changing working patterns, and e.g. the Human Rights Treaty body reform, it was obvious that the workload at the CTPU would be reduced, hence, they were satisfied that the non-renewal of the Applicant's FTA was justified, as were efforts by the Administration to place staff from the TPUs elsewhere. As such, the decision was endorsed by DCM management on the basis of a proper justification, and was supported by the facts.

61. In light of all the foregoing the Tribunal finds that the Applicant failed to meet the burden of proof that the decision was based by ulterior motives. The Tribunal also notes that the Applicant did not file a formal complaint for retaliation, under the terms of ST/SGB/2005/21.

Situation in other TPUs and impossibility to use the Applicant's services elsewhere

62. The fact that staff from other TPUs were (temporarily) released from the TPUs in June 2014, e.g. from the French TPU to Human Resources, "in order to open to them new career possibilities" (p. 317 of the case file), and generally, staff from the TPUs was asked to try to find other positions confirms a trend of a reduced workload and of the "usability" of text processing clerks, not only in the CTPUs, but also in other TPUs.

63. The evidence from the then Executive Officer, DCM, and the then Chief, LS, confirmed that unfortunately, no solution to otherwise use the Applicant's services was found. The Tribunal is satisfied that in light of the limitation of the Applicant's FTA to DCM, and since she had not passed the ASAT test which requires working knowledge of one of the two UN working languages, and overall her professional and languages skills (or limitations), the Administration was not in a position to transfer the Applicant to another post or Department.

Ultra vires

64. The Tribunal is satisfied that the Deputy Chief, LS, had the authority to decide not to renew the Applicant's appointment (see *Filippova*

UNDT/2016/006), and that the decision, which was also endorsed by the Executive Office, was not *ultra vires*.

General Observation

65. The Tribunal is well aware of the impact that the non-renewal of an appointment can have upon a staff member. In respect of all such matters staff members have a clear right to challenge the basis of the decisions taken, especially noting that they are not party to all of the procedures undertaken and considerations of management. While the loss of a job by any person is most regrettable, management has a clear discretion to manage the affairs of the Organisation. Such will involve ensuring that the work of the Organisation is undertaken properly and responsibly within the budget provided. The mere disagreement with decision of management, or the belief that a different decision was equally open, does not make the decision contrary to law.

Conclusion

66. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Rowan Downing

Dated this 31st day of August 2017

Entered in the Register on this 31st day of August 2017

(Signed)

René M. Vargas M., Registrar, Geneva